

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
MARISSA ANTONUCCI,

ORDER  
02 CV 5246 (GBD)

Plaintiff,  
-against-

MORGAN STANLEY DEAN  
WITTER & CO., INC.,  
Defendant.

-----x  
GEORGE B. DANIELS, District Judge:

After this employment discrimination action was referred to Magistrate Judge Frank Maas, the plaintiff died. Defendant now moves to preclude plaintiff's estate from offering the plaintiff's deposition testimony, into evidence at trial, on the grounds that it is inadmissible hearsay under Rule 804(b)(1) of the Federal Rules of Evidence. Magistrate Judge Maas issued a Report and Recommendation ("Report") wherein he found that defendant was denied an adequate opportunity to examine plaintiff prior to her death. The magistrate judge, therefore, recommends that defendant's motion be granted. In the Report, Magistrate Judge Maas advised the parties that failure to file timely objections to the Report will constitute a waiver of those objections for purposes of appeal. No party filed objections to the Report and the time to do so has expired. 28 U.S.C. § 636(b)(1).

The Court may accept, reject or modify, in whole or in part, the findings and recommendation set forth within the Report. 28 U.S.C. § 636(b)(1). Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd sub nom. Heisler v. Rockland County, 164 F.3d 618 (2d Cir. 1998).

After reviewing the Report, the Court finds that the record is not facially erroneous. Therefore, the Court adopts the Report in its entirety and, for the reasons stated therein, the motion is granted.

Dated: New York, New York  
May 23, 2005

SO ORDERED:

  
\_\_\_\_\_  
GEORGE B. DANIELS  
United States District Judge